IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.437 OF 2002

IN

ADMIRALTY SUIT NO.3 OF 1993

M.V. Eagle Nova and anr. ...Appellants

v/s

Vedant Exports ...Respondents

Mr S. Sen with Ms A.R. Borkar i/b M/s Little and Co. for Appellants.

Mr V.N. Sheth with Mr R.A. Fernandes for Respondents.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 25TH OCTOBER 2007.

P.C. :-

1. By this appeal, the appellants challenge the judgment and decree passed by the learned Single Judge of this Court dated 17th April 2002 in admiralty suit No.3 of 1993. The suit was filed by the present respondents. The respondent No.1 in the suit was a vessel of German registration. The respondent No.2 was a person interested in that vessel. The plaintiffs in the suit were claiming a money decree in the sum of US $ 58,563.91 and also decree in other sums. According to the plaintiffs, the plaintiff - Company is a partnership firm, carrying on business as exporters. The defendant No.1 is a foreign vessel and the defendant No.2 is a Company organised under the foreign laws and is interested in the defendant No.1 vessel. According to the plaintiffs, certain goods were sold by them to one M/s Galaxy Overseas Inc., a Company incorporated in California, U.S.A. The plaintiffs shipped Indian knitted woollen carpets after completing the necessary export formalities on the defendant No.1 - vessel. In respect of the said transaction, two bills of lading both dated 3rd March 1992 were issued. It appears that the defendant No.1 vessel delivered the consignment to M/s Galaxy Overseas Inc. without the purchaser M/s

Galaxy Overseas Inc. producing the original bills of lading. According to the plaintiffs, because of that, the plaintiff suffered loss and the plaintiff filed a suit for recovery of the loss suffered by it. It appears that in the suit, only one witness was examined by the plaintiff by name Bagadia. One more witness appeared and he produced documents that were in possession of the Bank. The Court decided the suit. Basically, the Court held that the respondents were not justified in delivering the consignment to M/s Galaxy Overseas Inc. without producing the original bills of lading and therefore, the act of the defendants of delivering the consignment to M/s Galaxy Overseas Inc. without M/s Galaxy Overseas Inc. producing the original bills of lading was unauthorised. The Court therefore held that the defendants are liable to make good the loss that may have been suffered by the plaintiffs. The learned Judge however held that the plaintiffs have not been able to prove that the plaintiffs have suffered any loss. However, the learned Judge held that the plaintiffs are entitled to the price of the goods which were delivered by the defendants unauthorisedly to M/s Galaxy Overseas Inc. For the purpose of arriving at the price of the goods, the learned Judge relied on two invoices which were produced on record by the witness who was summoned to produce the documents from the Bank. An objection was raised on behalf of the defendants that

the Court cannot rely on the invoices because those invoices have not been proved. In paragraph 13 of the order, the learned Single Judge has also observed that those documents have not been proved but he observed that because the original invoices have been produced by the witness who was summoned to produce the documents, the invoices can be relied on.

2. The learned counsel appearing for defendants submits that leaving aside all the findings recorded by the learned Single Judge and accepting them for the moment to be correct, the learned Judge could not have relied on two invoices for arriving at price of the goods without those invoices being proved by the plaintiff. Perusal of the deposition of the only witness examined by the plaintiff shows that he has neither referred to those invoices nor he has proved those invoices. Therefore, it is an admitted position that the invoices on the basis of which the learned Judge has passed the decree have not been admittedly proved by the plaintiffs. In our opinion, the learned Judge was not justified on relying on those invoices merely because they are original invoices. At least some witness should have been examined to testify that those invoices relate to the goods to which the suit relates. Nobody has deposed that. Without there being any evidence on record that the goods to which suit

relates are purchased under those invoices. The amounts mentioned in those invoices could not have been taken as the price of the goods. In this view of the matter therefore, as the invoices have not been proved, the learned Judge was not justified on relying on those invoices and if those invoices are excluded from consideration, there is no evidence on record to show as to what was the price of the goods which were unauthorisedly delivered by the defendants. Therefore, in the absence of any documentary or oral evidence on record, the learned Judge could not have passed decree in favour of the plaintiffs and against the defendants directing the defendants to pay the price of the goods mentioned in the invoices.

3. In the result therefore, appeal succeeds and is allowed, the judgment and decree impugned in the appeal is set aside. The suit filed by the plaintiffs is dismissed with no order as to costs.

4. Pursuant to the interim order, admittedly the appellants have given bank guarantee. Now since the appeal is allowed, the plaintiffs can discharge the bank guarantee. In view of the order passed in appeal, cross-objections filed by the plaintiffs are disposed off. The appellants shall discharge the bank guarantee after expiry of the period of six weeks from today.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary of the Court.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)